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## RECENT CASES.

ASSIGNMENTS—EQUITABLE ASSIGNMENTS—CHECKS.—KUHNES v. CAHILL, 104 N. W. 1025 (Iowa).—*Held*, the giving of a check on a general deposit fund in a bank, amounts to an equitable assignment *pro tanto* of the fund.

The weight of authority, both in England and this country, is in opposition to the above ruling. *Laclede Bank v. Schuler*, 120 U. S. 511; *Com. ex rel. Atty. Gen. v. American Life Insurance Co.*, 162 Pa. 586. The provision of the negotiable instrument act, section 189, follows the current American law. As construing this section see *Baltimore etc. Ry. Co v. First National Bank*, 47 S. E. 837. The minority ruling, however, is set forth in *Springfield Marine and Fire Insurance Co. v. Peck*, 102 Ill. 265; *Farmers Bank and Trust Co. v. Newland*, 97 Ky. 464. As to effect between parties see *Pease v. Laudaner*, 63 Wis. 20. But an order payable out of a particular fund may operate as an equitable assignment. *Flor- ence Mining Co. v. Brown*, 124 U. S. 391; also *Fortier v. Delgado*, 122 Fed. 604, where check operated as an assignment.

BANKS AND BANKING—INSOLVENCY—TITLE TO DEPOSIT.—CLARK v. TOR- ONTO BANK ET AL., 82 PAC. 582 (KAN.).—*Held*, that where a bank fails and passes into the hands of a receiver after it has issued a draft upon a correspondent bank in which it has funds on deposit, and the drawee has notice of the receivership before the draft is presented for payment, the title to such deposit passes to the receiver, and the holder of the draft, in the absence of any special circumstances, is entitled to no priority over other creditors of the failed bank.

The giving of a draft does not operate as an assignment of the funds standing to the credit of the drawer. *Duncan v. Berlin*, 60 N. Y. 153. Checks drawn in the usual form, not describing any particular fund, or using any words of transfer of the whole or any part of any amount standing to the credit of the drawer, but containing only the usual request, are of the same legal effect as an inland bill of exchange, and do not amount to an assignment of the funds of the drawer in the bank. *Lunt v. Bank of North America*, 49 Barb. 221; the almost universally accepted rule being that to constitute an assignment, the order must specify the particular fund upon which it is drawn. *Atty. Gen. v. Continental Life Ins. Co.*, 71 N. Y. 325. There are, on the other hand, authorities which hold that a draft operates as an assignment of the funds on which it is drawn *pro tanto* from the very time it is drawn and delivered, on the ground that, the assignor having received a consideration for the draft, his equities are inferior to those of the payee of the draft, and as the assignee stands in the shoes of the assignor he has no better equities than the assignor. *First National Bank v. Coates*, 8 Fed. 540; *Daniels on Negot. Instruments*, sec. 1643.

CARRIERS—LOSS OF FREIGHT—DAMAGES—LIMITATION.—HAYES v. ADAMS EXPRESS CO., 62 ATL. 284 (N. J.).—On delivering to a common carrier a drop curtain of ordinary character and value, the shipper received as a voucher therefor an instrument in which it was stated that, when the shipper omits to declare the value of goods, he agrees that the value does not exceed \$50.00. *Held*, that the responsibility of the carrier for the real value in case of loss was not thereby restricted unless the shipper had knowledge of the stipulation; and his knowledge that the carrier's charges depend upon the value of the goods is not sufficient to render the limit of liability obligatory.

In this country the rule is well established, that notices limiting liability are of no avail, unless assented to by the shipper. *Transportation Co. v. New- hall*, 24 Ill. 466; *Dorr v. Navigation Co.*, 11 N. Y. 485. Burden of proof is upon the carrier to establish the contract qualifying his liability, if he claims